



U.S. Department of Justice

Environment and Natural Resources Division

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May 31, 2011

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Pat Hardina, General Counsel
Icicle Seafoods Company
4019 21st Avenue, W.
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Re: United States v. Icicle Seafoods, Inc.

Dear John and Pat:

As we have previously discussed, the United States is prepared to file a civil action in United States District Court for the Western District of Washington alleging claims against Icicle Seafoods, Inc., for violations of the Clean Air Act and the Act's Title VI regulations set forth at 40 C.F.R. Part 82. This letter identifies Icicle's alleged violations, sets forth a settlement demand, and asks Icicle to make a good faith offer of settlement so that we may attempt to resolve the United States' claims through the negotiation of a consent decree.

Background

In 1987, the United States and 160 other countries negotiated the Montreal Protocol, which instituted a worldwide phase-out of the production and consumption of ozone-depleting substances. To implement the Montreal Protocol, Congress enacted Title VI of the Clean Air Act, 42 U.S.C. §§ 7671-7671q, which authorizes EPA to regulate the production and use of Class I and Class II ozone-depleting substances, and requires that such substances in use be recovered to prevent future releases to protect the atmosphere's stratospheric ozone layer.

Strict enforcement of EPA's Title VI regulations is essential to protect the ozone layer. Because this case is of significant environmental interest and importance, the United States seeks a civil penalty sufficient to deter similar future violations, and injunctive relief to remediate the environmental harm resulting from your clients' noncompliance, and to ensure that Icicle

Seafoods complies with the regulations in the future.

The United States' claims in this matter arise from Icicle's failure to repair leaks in and properly maintain its refrigeration appliances containing the ozone-depleting substance monochlorodifluoromethane, commonly known as R-22. The United States' claims are based on Icicle's response to an EPA Clean Air Act request for information. Icicle's response included logs provided to EPA by Icicle indicating the dates on which refrigerants were added to refrigeration appliances, and the amounts added on each date. Based on the logs, EPA has identified the dates on which Icicle should have calculated leak rates for refrigeration equipment at its facilities and conducted necessary follow-up actions in response to those leaks.

The United States alleges that Icicle has committed the following violations of the Clean Air Act and its Title VI regulations.

Description of Violations

1. Failure to Repair Leaks on the *Northern Victor*

40 C.F.R. § 82.156(i)(2) requires owners and operators of industrial process refrigeration equipment that is leaking at a rate of 35% or more annually to make repairs within 30 days of the date such a leak is discovered or should have been discovered if the owner or operator shielded itself from discovery.

The United States alleges that on September 3, 2006, September 13, 2006, June 12, 2007, and June 20, 2007, Icicle added, respectively, 500, 1,000, 500, and 1,500 pounds of R-22 to the *Northern Victor*'s industrial process refrigeration equipment. On each of these dates, Icicle should have conducted an annual leak-rate calculation pursuant to the Title VI regulations. Had Icicle done so, it would have discovered that the industrial process refrigeration equipment on the *Northern Victor* was leaking at a rate in excess of 35% annually. By failing to perform such leak rate calculations, Icicle shielded itself from the discovery of leaks it should have discovered.

Because Icicle failed to repair within 30 days the leaks on the *Northern Victor* it should have discovered, Icicle is liable for violations of 40 C.F.R. § 82.156(i)(2).

2. Bringing the *Northern Victor*'s Refrigeration Equipment Back On-Line Without Demonstrating Successful Leak Repair

On March 13, 2007, Icicle added 1,000 pounds of R-22 to the industrial process refrigeration equipment on the *Northern Victor*. Based on that addition of R-22, Icicle should have known that the industrial process refrigeration equipment on the *Northern Victor* was leaking at a rate of greater than 35% for a 12-month period.

On April 5, 2007, Icicle began recovering refrigerant from the Northern Victor's industrial process refrigeration system, and it was mothballed and off-line by April 10. On May 27, 2007, Icicle brought the Northern Victor's leaking industrial refrigeration system on-line without first performing an initial leak repair verification test demonstrating that the leak had been successfully repaired, in violation of 40 C.F.R. § 82.156(i)(3)(i).

Because Icicle brought the *Northern Victor's* previously-leaking industrial process refrigeration equipment back on-line on May 27, 2007, without demonstrating the successful completion of a leak repair, Icicle is liable for violations of 40 C.F.R. § 82.156(i)(3)(i).

3. Failure to Repair a Leak in Commercial Refrigeration Equipment at the Scatter Creek Facility

40 C.F.R. § 82.156(i)(1) requires owners and operators of commercial refrigeration equipment with an annual leak rate of 35% or more to make repairs within 30 days of discovering a leak.

On November 2, 2006, Icicle added 52 pounds of R-22 to its commercial chiller at the Scatter Creek facility. This information reveals that, as of November 2, 2006, the Scatter Creek chiller had an annual leak rate exceeding 35%. Because Icicle did not make a repair to the chiller within 30 days of November 2, 2006, it is liable for a violation of 40 C.F.R. § 82.156(i)(1).

4. Failure to Perform an Initial Leak Repair Verification Test on the Northern Victor

Where repairs have been conducted without an industrial process shutdown or system mothballing, 40 C.F.R. § 82.156(i)(3) requires owners and operators to conduct initial verification tests for leak repairs at the conclusion of the repair, and to conduct a follow-up verification test within 30 days of the initial verification test.

According to its records, in December of 2006 Icicle repaired a leak with an annual leak rate greater than 35% on the *Northern Victor* without performing an initial leak repair verification test. Icicle is therefore liable for one violation of 40 C.F.R. § 82.156(i)(3).

5. Failure to Document Initial Leak Repair Verification Tests on the Northern Victor

40 C.F.R. § 82.166(n)(3) requires that "[o]wners and operators must maintain records of the dates, types, and results of all initial and follow-up verification tests performed under 40 C.F.R. § 82.156(i)(3)."

During January 23-25, 2008, and again during February 20-25, 2008, Icicle made leak repairs to the *Northern Victor's* industrial process refrigeration equipment, which was leaking at a rate greater than 35% annually, without adequately documenting the performance of initial leak repair verification tests.

Icicle is therefore liable for violations of 40 C.F.R. § 82.166(n)(3).

6. Failure to Conduct Follow-Up Leak Repair Verification Tests on the *Northern Victor*

In December of 2006, and again during January 23-25, 2008, Icicle made repairs to the *Northern Victor*'s industrial process refrigeration equipment, which was leaking at a rate greater than 35% annually, without performing follow-up leak repair verification tests within 30 days of completing leak repairs.

Icicle is therefore liable for violations of 40 C.F.R. § 82.156(i)(3).

7. Failure to Document a Follow-Up Leak Repair Verification Test on the *Northern Victor*

40 C.F.R. 82.166(n)(3) requires owners and operators to maintain records of the dates, types, and results of all initial and follow-up verification tests performed under 40 C.F.R. 82.156(i)(3).

During February 20-25, 2008, Icicle made leak repairs to the *Northern Victor*'s industrial process refrigeration equipment, which was leaking at a rate greater than 35% annually, without adequately documenting the performance of a follow-up leak repair verification test within 30 days of completing the leak repairs.

Icicle is therefore liable for one violation of 40 C.F.R. § 82.166(n)(3).

8. Failure to Properly Document a Follow-Up Leak Repair Verification Test at the Egegik Cannery's Main Refrigeration System

On July 5, 2007, Icicle repaired a leak in the industrial process refrigeration equipment at its Egegik, Alaska, cannery's main refrigeration system and completed a follow-up leak repair verification test. However, the follow-up leak repair report did not indicate the type of test Icicle performed to confirm the success of the leak repair.

Icicle is therefore liable for one violation of 40 C.F.R. § 82.166(n)(3).

9. Failure to Properly Document a Follow-Up Leak Repair Verification Test at the Egegik Cannery's RSW Chiller

On June 18, 2007, Icicle repaired a leak in the industrial process refrigeration equipment at its Egegik Cannery known as the RSW Chiller, and confirmed the success of the repair.

However, the report of the leak repair verification test did not indicate the date of the test or the type of the test performed to confirm the success of the leak repair. Icicle is therefore liable for one violation of 40 C.F.R. § 82.166(n)(3).

10. Failure to Maintain Certified, Self-Contained Recovery Devices at the *Northern Victor* and the Larson Bay Cannery

Icicle Seafoods is required, pursuant to 40 C.F.R. § 82.156(b), to have at least one piece of certified, self-contained recovery equipment at each place of business where at least one refrigerant-containing appliance does not contain a pump-out unit. This requirement is applicable at facilities where Icicle employees service the facility's refrigerant-containing equipment.

Because from January 1, 2003, until December 31, 2007, the *Northern Victor* did not have a certified, self-contained refrigerant recovery device, and because the Larson Bay Cannery did not have such a device until October 14, 2009, Icicle is liable for violations of 40 C.F.R. § 82.156(b).

11. Failure to Certify the Acquisition of Required Recovery and Recycling Equipment at the *Northern Victor*, the *Arctic Star*, Petersburg Fisheries, the Egegik Cannery, the Smoki Foods facility in Seattle, and the facility in Bellingham, Washington

40 C.F.R. § 82.162(a) requires persons who maintain, service, or repair certain appliances to certify to EPA, within 20 days of commencing business, that certified recovery or recycling equipment has been acquired and that the person is complying with the applicable requirements of Part 82, Subpart F.

Icicle first certified to EPA that it acquired certified recovery or recycling equipment for the following facilities on the following dates: the *Northern Victor* (August 8, 2008), the *Arctic Star* (July 30, 2008), the Egegik Cannery (August 4, 2008), the Petersburg Fisheries (July 1, 2008), the Smoki Foods facility in Seattle, Washington (August 15, 2008) and the commercial seafood facility in Bellingham, Washington (August 13, 2008).

Because, prior to those dates, Icicle had failed to certify to EPA that it had acquired certified recovery or recycling equipment at the indicated facilities, Icicle is liable for violations of 40 C.F.R. § 82.162(a).

12. Failure to Maintain Adequate Service and Maintenance Records

40 C.F.R. § 82.166(k) requires that "[o]wners/operators of appliances normally containing 50 or more pounds of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added." The recordkeeping requirements are critical because they assist owners and operators in complying with the regulations, and they

are the best means by which EPA may verify compliance with the substantive requirements of the regulations.

On the occasions identified on the following chart, Icicle failed to maintain adequate maintenance service records for its facilities, in violation of 40 C.F.R. § 82.166(k).

| Facility | Date(s) of Service | No. of Violations | Alleged Violation |
|-----------------|---|--------------------------|---|
| Northern Victor | 1/1/06-12/31/06; 6/5/07-9/30/07; late December 2007 to 1/22/08 | 47 | Technician logs lost, destroyed, or cannot be located |
| Northern Victor | 12/2006, 2/2007, 12/2007 | 3 | Failure to adequately document date of service |
| Egegik Cannery | May 2006, May-June 2007, 8/6/2007 | 3 | Failure to adequately document the date of service and/or the amount of refrigerant added |
| Bellingham | 5/17/06-5/30/06, Jul/Aug 2006 | 2 | Failure to adequately document the date and type of service |
| Bellingham | Mid-2006 | 2 | Failure to keep records of service performed by contractors |
| Adventure | 10/31/2006 | 1 | Failure to adequately document date and type of service |
| American Eagle | May 2006 | 1 | Failure to adequately document date and type of service |
| Anita J | Oct. 2006, Nov. 2006, Dec. 2006, Jan. 2007, Mar. 2007, May 2007 | 6 | Failure to adequately document date of service |
| Anita J | 2/28/2008 | 1 | Failure to document the amount of refrigerant added |

| | | | |
|---------------|--|---|---|
| Commodore | Apr. 2007, Jul. 2007, Aug. 2007, Sept. 2007, Nov. 2007, Jan. 2008 | 6 | Failure to adequately document date of service |
| Half Moon Bay | Mar. 2006, May 2006, Jan. 2007 | 3 | Failure to adequately document date of service |
| Half Moon Bay | 7/20/2006 | 1 | Failure to document the amount of refrigerant added |
| Storm Petrel | Aug. 2007, May 2008 | 2 | Failure to adequately document date of service |
| Storm Petrel | Jan. 2008 | 1 | Failure to adequately document date of service |

Summary of All Violations

The above claims and associated violations are summarized as follows:

| Type of Violation | Number of Violations (for Settlement Purposes) |
|--|--|
| Failure to Repair Leaks on the <i>Northern Victor</i> | 4 |
| Bringing <i>Northern Victor</i> 's Refrigeration Equipment On-line Prior to Demonstrating Successful Leak Repair | 1 |
| Failure to Repair Leaks - Commercial Refrigeration Equipment at Scatter Creek | 1 |

| | |
|---|----|
| Failure to Perform Initial Leak Repair Verification Test on the <i>Northern Victor</i> | 1 |
| Failure to Document Initial Leak Repair Verification Tests on the <i>Northern Victor</i> | 2 |
| Failure to Conduct Follow-Up Leak Repair Verification Test on the <i>Northern Victor</i> | 2 |
| Failure to Document Follow-Up Leak Repair Verification Test on the <i>Northern Victor</i> and at the Egegik Cannery Main System and RSW Chiller | 3 |
| Failure to Maintain Certified Recovery Devices at the <i>Northern Victor</i> and the Larson Bay Cannery | * |
| Failure to Certify the Acquisition of Required Recovery and Recycling Equipment (Multiple Facilities) | ** |
| Recordkeeping Violations | 79 |

* For this penalty demand, the United States has calculated multiple days of violations at the two affected facilities.

** For this penalty demand, the United States has treated the multiple days of violation at the multiple affected facilities as a single day of violation at a single facility.

Demand for Civil Penalty and Injunctive Relief

Based on the statutory penalty factors set forth in 42 U.S.C. § 7413(e)(1), and EPA's civil penalty policy as applied to the facts in this case, the United States demands that Icicle Seafoods pay a civil penalty of \$1,073,300 to resolve this action.

In addition, the United States requests that the consent decree in this matter include the following injunctive relief:

1. A requirement that Icicle Seafoods conduct a comprehensive leak inspection of its vessels and facilities and submit a report to EPA identifying the leaks discovered in the inspection and proposing a plan for their repair.

2. A requirement that Icicle periodically submit to EPA, for at least a two year period, copies of the records required by 40 C.F.R. § 82.166(k) for all Icicle Seafoods vessels and facilities.

3. A requirement to undertake remedial measures to offset the environmental harm caused by the release of R-22. We estimate that between January 2006 and August 2008, Icicle released 23,725 pounds of R-22 to the atmosphere.

We welcome proposals for remedial actions to address the harm caused by Icicle Seafoods' violations and that are likely to reduce future ozone-depleting substances leaks from the company's vessels and facilities. We are specifically interested in exploring your willingness to switch to the use of non-ozone-depleting substance refrigerants in advance of the mandatory 2020 R-22 phase-out. We are also interested in exploring your willingness to repair future identified leaks at a lower leak rate trigger than that currently required by the regulations, as a means of offsetting the harm caused by the company's releases of R-22.

General Conditions of Settlement

Any settlement of this matter must be set forth in a written consent decree, which will be lodged in the United States District Court for the Western District of Washington. The United States will publish notice of the lodging of the proposed consent decree in the Federal Register, and receive, for at least 30 days, public comments on the proposed consent decree. The United States will reserve the right to withdraw from the consent decree if the public comments disclose that the consent decree is unfair, unreasonable, or inconsistent with the Clean Air Act.

In addition, authority to bind the United States to any settlement agreement rests with higher public officials at the Justice Department and EPA. The United States will not be bound to any settlement in this matter until a written consent decree, approved by appropriate government officials, has been entered by order of a federal district court following a period of public comment.

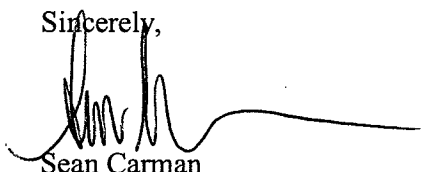
We request that Icicle make an offer of settlement in this matter. Because EPA has requested information from Icicle pertaining to these alleged violations, and you have responded by providing documents, records, information, and some explanations and defenses, we assume that you are already familiar with the United States' allegations and legal claims in this matter. Accordingly, we have kept our descriptions of the alleged violations relatively brief. However,

we will be happy to answer any reasonable questions and provide additional information necessary to allow your clients to make a settlement offer.

In addition, we understand that our discussions may require some extension of the current tolling agreement. Assuming you are willing to discuss a resolution of this matter, we are prepared to extend the tolling agreement.

Finally, we are hoping we can receive a settlement offer from you by June 24, 2011. Please contact me so we can discuss these matters further. I look to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean Carman', with a long horizontal flourish extending to the right.

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